HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Petition No.23101 of 2005

Between:

D. Vittal

... Petitioner

And

The Hon'ble High Court of Andhra Pradesh
Through its Registrar (Vigilance) and others

... Respondents

:: ORDER::

Counsel for the Petitioner: Shri V. Venugopal Rao

Counsel for Respondent No.1: Shri C.V. Nagarjuna Reddy

Counsel for Respondent No. 2: Government Pleader for Home

August , 2006

Per G.S. Singhvi, CJ

Whether the petitioner, who was a member of the Andhra Pradesh State Judicial Service, could be retired at the age of 58 years by invoking proviso to Section 3 (1-A) of the Andhra Pradesh Public Employment (Regulation of Age of Super-annuation) Act, 1984 (for short, the Act') is the question which arises for determination in this petition filed for quashing G.O. Ms.No.101 Home (Courts-C1) Department, dated 27-7-2005 and the consequential proceedings of the High Court of Andhra Pradesh in Order Roc.No.4047/2005-B. Special, dated
27-7-2005.

The petitioner was born on 10-7-1947. He joined service as Copyist in 1966 under District and Sessions Judge, Nizamabad. While working as Head Clerk in the Court of District and Sessions Judge, Nizamabad, he was appointed by transfer as District Munsif and was posted as IV Additional District Munsif at Warangal, vide Notification No.385-132, dated 27-11-1985. In 1992, he passed the examination conducted by the Andhra Pradesh Public Service Commission. Thereafter, his appointment as District Munsif was regularized with effect from 21-9-1992. When he was working at Siricilla in Karimnagar District, disciplinary proceedings were initiated against the petitioner which ended in imposition of punishment of removal from service under G.O. Ms. No.455 Home (Courts), dated
14-6-1994. He challenged the same in Writ Petition No.14615 of 1994. By an order dated 6-6-2002, a Division Bench of this Court allowed the writ petition and ordered his reinstatement with continuity of service and other consequential benefits except back wages for the period between the date of removal and the date of reinstatement. Accordingly, he was reinstated as Junior Civil Judge

and was posted at Atmakur in Nellore District. After sometime, the petitioner filed Writ Petition No.8277 of 2005 questioning order dated 2-10-2004 vide which eleven persons junior to him in the cadre of Junior Civil Judges were promoted. During the pendency of that petition, he represented to the High Court for being allowed to continue in service up to the age of 60 years by claiming that there was no adversity in his service record.

It is borne out from the record that the issue relating to petitioner's continuance in service up to the age of 60 years was considered by the Administrative Committee of the High Court which recommended that he be compulsorily retired at the age of 58 years. Accordingly, the State Government issued the impugned G.O.

The petitioner has challenged his retirement on the following grounds:

1) The recommendation made by the Administrative Committee of the High Court is liable to be declared as nullity because the procedure prescribed under Rule 9 read with Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short, 'the 1991 Rules') had not been followed; and
2) the decision of the High Court not to extend his service beyond the age of 58 years is tainted by arbitrariness.

In the counter-affidavit filed on behalf of the High Court by Shri S. Sivaiah Naidu, Registrar (Vigilance), it has been averred that the petitioner was retired from service at the age of 58 years on the recommendations made by the Administrative Committee of the High Court. It has been further averred that compulsory retirement under proviso to Section 3 (1-A) of the Act does not amount to punishment

and, therefore, it was not necessary to follow the procedure prescribed under the 1991 Rules. On merits, it has been averred that the Committee of Judges recommended the petitioner's retirement after making an overall review and assessment of his entire service record and such recommendations are not subject to judicial review.

During the pendency of the writ petition, in the light of the statement made by Shri C.V.Nagarjuna Reddy, learned counsel for the High Court on 22-2-2006, the petitioner made representation for review of his premature retirement. The same was rejected by the Committee of Judges. The decision of the Committee was conveyed to the petitioner vide Roc No.4047/2005. B-Special dated 12-4-2006. Thereafter, on an application filed by the petitioner, which was registered as WPMP No.18639 of 2006, leave was granted to him to amend the writ petition and make prayer for setting aside the decision of the Committee to reject his representation.

Shri V. Venugopal Rao, learned counsel for the petitioner and Shri C.V. Nagarjuna Reddy, learned counsel for the High Court reiterated the stand taken by their respective clients in the pleadings. While Shri V. Venugopal Rao argued that the petitioner could not have been retired except after following the procedure prescribed under the 1991 Rules and that the service record of the petitioner did not contain any material which could justify formation of an opinion that he was not fit to be continued in service, Shri C.V. Nagarjuna Reddy submitted that compulsory retirement envisaged under proviso to Section 3 (1-A) is not penalty and, therefore, it was not necessary to follow the procedure prescribed under Rule 20 of the 1991 Rules. Shri Reddy further submitted that the Committee of Judges recommended compulsory retirement of the petitioner because he was not found fit to be continued up to the age of 60 years.

We have given serious thought to the entire matter and perused the service record of the petitioner made available by Shri C.V. Nagarjuna Reddy.

For deciding the question whether the compulsory retirement of the petitioner is liable to be nullified on the premise that the exercise undertaken by the High Court and the State Government was not preceded by an enquiry made in accordance with Rule 9 read with Rule 20 of the 1991 Rules, it will be useful to notice the background in which Section 3 (1-A) was inserted in the Act, which in its unamended form provided for retirement of all officers including the judicial officers at the age of 58 years.

In **All India Judges' Assn. v. Union of India**[1], the Supreme Court considered various issues relating to conditions of services of judicial officers and gave the following directions:

> "(i) An All India Judicial Service should be set up and the Union of India should take appropriate steps in this regard.
>
> (ii) Steps should be taken to bring about uniformity in designation of officers both in civil and the criminal side by March 31, 1993.
>
> (iii) Retirement age of judicial officers be raised to 60 years and appropriate steps are to be taken by December 31, 1992.
>
> (iv) As and when the Pay Commissions/Committees are set up in the States and Union territories, the question of appropriate pay scales of judicial officers be specifically referred and considered.
>
> (v) A working library at the residence of every judicial officer has to be provided by June 30, 1992. Provision for sumptuary allowance as stated has to be made.
>
> (vi) Residential accommodation to every judicial officer has to beprovided and until State accommodation is available, government should provide requisitioned accommodation for

them in the manner indicated by December 31, 1992. In providing residential accommodation, availability of an office room should be kept in view.

(vii) Every District Judge and Chief Judicial Magistrate should have a State vehicle, judicial officers in sets of five should have a pool vehicle and others would be entitled to suitable loans to acquire two wheeler automobiles within different time limits as specified.

(viii) In-service Institute should be set up within one year at the Central and State or Union territory level."

Feeling aggrieved by the aforementioned directions given by the Supreme Court, the Union of India and various State Governments filed review petitions. On the issue of enhancement of superannuation age, it was pleaded that the Supreme Court had erred in drawing distinction between the members of the judicial service and those of other services and further that the Court was not justified in giving direction in a policy matter which lay within the exclusive domain of the executive. A three Judges Bench of the Supreme Court considered various objections in **All India Judges' Assn. v. Union of India**[2]. While reiterating that the judicial services were not comparable with other services and confirming the directions given in the earlier judgment for enhancing the age of superannuation of the judicial officers to 60 years, the Supreme Court administered the following words of caution:

> "There is, however, one aspect we should emphasise here. To that extent the direction contained in the main judgment under review shall stand modified. The benefit of the increase of the retirement age to 60 years, shall not be available automatically to all judicial officers irrespective of their past record of service and evidence of their continued utility to the judicial system. The benefit will be available to

those who, in the opinion of the respective High Courts, have a potential for continued useful service. It is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility. The potential for continued utility shall be assessed and evaluated by appropriate Committees of Judges of the respective High Courts constituted and headed by the Chief Justices of the High Courts and the evaluation shall be made on the basis of the judicial officer's past record of service, character rolls, quality of judgments and other relevant matters."

The Supreme Court then gave the following directions regarding the procedure to be followed by the High Courts in the matter of extension of the age of superannuation of the judicial officers up to the age of 60 years:

> "The High Court should undertake and complete the exercise in case of officers about to attain the age of 58 years well within time by following the procedure for compulsory retirement as laid down in the respective Service Rules applicable to the judicial officers. Those who will not be found fit and eligible by this standard should not be given the benefit of the higher retirement age and should be compulsorily retired at the age of 58 by following the said procedure for compulsory retirement. The exercise should be undertaken before the attainment of the age of 58 years even in cases where earlier the age of superannuation was less than 58 years. It is necessary to make it clear that this assessment is for the purpose of finding out the suitability of the concerned officers for the entitlement of the benefit of the increased age of superannuation from 58 years to 60 years. It is in addition to the assessment to be undertaken for compulsory retirement and the compulsory retirement at the earlier stage/s under the respective Service Rules."

After taking note of the two judgments of the Supreme Court, the Government of Andhra Pradesh amended Section 3 (1-A) of the Act.

The same reads as under:

> "Notwithstanding anything contained in sub-section (1), every member of the Andhra Pradesh State Higher Judicial Service or the Andhra Pradesh State Judicial Service shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:
>
> Provided that any such member of the Andhra Pradesh State Higher Judicial Service or the Andhra Pradesh State Judicial Service may be compulsorily retired from service on the afternoon of the last day of the month in which he attains the age of fifty eight years if he is not found fit and eligible to be continued in service by the High Court of Andhra Pradesh on an assessment and evaluation of the record of such member for his continued utility well within time before he attains the age of fifty-eight years by following the procedure for compulsory retirement under the rules applicable to him;
>
> Explanation:- The assessment and evaluation by the High Court of Andhra Pradesh for the purpose of this sub-section is in addition to and independent of the assessment for compulsory retirement that may have to be undertaken at any other time under the relevant rules applicable to such members of the Andhra Pradesh State Higher Judicial Service or the Andhra Pradesh State Judicial Service".

On a reading of the plain language of the above reproduced provision, the argument of Sri Venugopal Rao that the petitioner could have been retired under proviso to Section 3(1-A) of the Act only after following the procedure prescribed under the 1991 Rules for imposing the penalty of compulsory retirement appears attractive, but on a deeper examination, we do not find any merit in it.

In terms of substantive part of Section 3 (1-A), a member of the Andhra Pradesh State Higher Judicial Service or the Andhra Pradesh State Judicial Service is entitled to continue in service up to the age of 60 years. Proviso to this section postulates retirement of a member of service at the age of 58 years if, on an assessment and evaluation

of his record, the High Court comes to the conclusion that he is not fit and eligible to be continued in service beyond the age of 58 years. Explanation to this rule clarifies that the assessment and evaluation by the High Court for the purpose of sub-section (1-A) of Section 3 is in addition to and independent of the assessment for compulsory retirement which may be undertaken at any other time under the relevant rules.

In service jurisprudence, the expression "compulsory retirement" has two connotations. Under various disciplinary rules, compulsory retirement is one of the penalties which can be inflicted on a delinquent employee if he is found guilty of misconduct. Such penalty can be inflicted only after following the procedure prescribed under the relevant rules and the principles of natural justice. The Central Government/ State Government/appropriate authority can also retire an employee on attaining a particular age or after completing the specified period of qualifying service, if the competent authority, on an evaluation and assessment of the record of the employee forms an opinion that he is no longer fit to be continued in service or that he has become deadwood or that his retention in service is no longer in public interest. The latter category of retirement cannot be treated as punitive per se. I n **Bishwanath Prasad Singh v. State of Bihar**[3], the Supreme Court highlighted the distinction between two concepts of compulsory retirement in the following words:

> "Compulsory retirement in service jurisprudence has two meanings. Under the various disciplinary rules, compulsory retirement is one of the penalties inflicted on a delinquent government servant consequent upon a finding of guilt being recorded in disciplinary proceedings. Such penalty involves stigma and cannot be inflicted except by following procedure

prescribed by the relevant rules or consistently with the principles of natural justice if the field for inflicting such penalty be not occupied by any rules. Such compulsory retirement in the case of a government servant must also withstand the scrutiny of Article 311 of the Constitution. Then there are service rules, such as Rule 56(*j*) of the Fundamental Rules, which confer on the Government or the appropriate authority, an absolute (but not arbitrary) right to retire a government servant on his attaining a particular age or on his having completed a certain number of years of service on formation of an opinion that in public interest it is necessary to compulsorily retire a government servant. In that case, it is neither a punishment nor a penalty with loss of retiral benefits. Compulsory retirement in public interest under service rules is like premature retirement. It does not cast any stigma. The government servant shall be entitled to the pension actually earned and other retiral benefits. So long as the opinion forming basis of the order for compulsory retirement in public interest is formed bona fide, the opinion cannot be ordinarily interfered with by a judicial forum. Such an order may be subjected to judicial review on very limited grounds such as the order being mala fide, based on no material or on collateral grounds or having been passed by an authority not competent to do so. The object of such compulsory retirement is not to punish or penalise the government servant but to weed out the worthless who have lost their utility for the administration."

If the expression 'by following the procedure for compulsory retirement under the rules applicable to him' used in the proviso to Section 3(1-A) is read in the light of what we have discussed above, it becomes clear that the same does not impose an obligation on the High Court to follow the procedure contained in the 1991 Rules before recommending retirement of an officer at the age of 58 years. It merely ordains that if there exists any rule for premature retirement of an employee, then the said rule should be complied with before

ordering retirement of an officer at the age of 58 years. In its very nature, compulsory retirement envisaged under proviso to Section 3 (1-A) is non-punitive in character because decision in that regard has to be taken on the basis of an assessment and evaluation of the service record of the officer concerned. Therefore, the requirement of following the procedure prescribed under Rule 20 of the 1991 Rules cannot be read as implicit in proviso to Section 3(1-A) of the Act.

We are further of the view that if proviso to Section 3 (1-A) of the Act is interpreted in the manner suggested by the learned counsel for the petitioner, the purpose of substantive portion of the proviso will be defeated because the power to compulsorily retire an office by way of punishment can be exercised by the competent authority at any time by following the procedure prescribed under the 1991 Rules.

What we have observed above is fully supported by the judgment of this Court in **Kotipally Murali Mukunda Rao v. State of A.P.**[4]. The facts of that case were that the petitioner who was a member of judicial service of the State of Andhra Pradesh was compulsorily retired on attaining the age of 58 years. Writ Petition No.14670 of 1993 filed by him was dismissed by the Division Bench vide order dated 10-12-1993. However, by taking shelter of sub-section (1-A) of Section 3, which was inserted by Amendment Act of 1998, he filed Writ Petition No.17408 of 1999 for invalidation of his retirement by contending that the decision to retire him was taken without following the procedure prescribed for compulsory retirement. The Division Bench considered the issue in detail, negatived the petitioner's challenge and held as under:

> "8. The stress laid on the words "following the procedure for compulsory retirement under the Rules applicable" is, if we may say so, rather misconceived. The

premise on which the learned counsel for the petitioner has built up his argument rests on a wrong assumption as to the real purport and nuances of that phraseology. In fact, the same language is used in the judgment of the Supreme Court. The real emphasis, in our view, is on the word 'procedure'. The legislative injunction in tune with the Supreme Court's ruling is that the procedure laid down in the Service Rules or the procedure evolved by administrative instructions if any on the subject should be followed. It does not mean that substantive requirements of the rule relating to compulsory retirement such as the fundamental conditions for initiating a move to compulsorily retire a public servant can be regarded as the 'procedure for compulsory retirement'. For instance, the rule contained in the proviso to Rule 44 requiring the appointing authority to give a notice in writing three months ahead of the date on which the employee is required to retire or to tender three months' pay in lieu of such notice, is a part of procedural requirement. It is also possible to visualise the issuance of certain administrative instructions to provide for modalities for assessment of the performance and utility of the public servant for the purpose of taking a decision under Rule 44. For instance, there may be some instructions as to the materials to be considered by the Review Committee or obtaining of reports from any administrative superiors. Such instructions may be regarded as part of the procedural gamut for consideration of cases of compulsory retirement under Rule 44.

9. It would lead to incongruous and contradictory results if we consider the expression "procedure for compulsory retirement" as to mean that the entire Rule 44 of A. P. Revised Pension Rules is to be transplanted into sub-section (1-A) of Section 3. Completion of 33 years of qualifying service will be wholly out of place in the context of sub-section (1-A) which as we have already clarified is nothing but reiteration of the principle laid down by the AIJA case (supra). 'Public interest' as such cannot also be imported into this provision, though very often, the considerations which go into the assessment of fitness and continued utility as member of the Judicial Service coincide with the

considerations of public interest. The expression 'procedure for compulsory retirement' cannot be divorced from the context and it cannot run counter to the mandate of opening clause of the proviso. The proviso which is in the nature of an exception or qualification to the main provision ordains that a Judicial Officer should be compulsorily retired from service on the last date of the month on which he attains the age of 58 years when once the High Court on assessment reaches a decision that the Officer does not have the continued utility to remain in service and therefore, he is unfit to continue beyond 58 years. The concept of completion of 33 years is wholly alien to the proviso to sub-section (1-A) which empowers the competent authority to retire a Judicial Officer on attaining the age of 58 years, in case he is found lacking in utility and fitness to continue further in service. The Explanation to sub-section (1-A) dispels any doubts in this regard and eloquently speaks for itself as to what is the true nature and purport of the assessment to be made in terms of the proviso. It is categorically stated therein ---- again in reiteration of the principle laid down by the Supreme Court, that the assessment and evaluation is in addition to and independent of the assessment for compulsory retirement that may have to be undertaken in accordance with the relevant service Rules governing the members of the A. P. Higher Judicial Service and A. P. Judicial Service. This again emphasises that the power conferred under sub-section (1-A) of Section 3 of Act 26 of 1998 is a special power exercisable vis-a-vis the retirement age of Judicial Officers. The entire provision would be unworkable if we endorse the interpretation placed by the learned counsel for the petitioner on the expression "following the procedure for compulsory retirement".

10. At the risk of repetition, we would like to clarify that the 'procedure' contemplated by the proviso does not mean substantive requirement for ordering compulsory retirement under the Service Rules. The procedure for compulsory retirement will only apply 'mutatis mutandis'. In the guise of applying the procedure, the essence and core of the substantive power to compulsorily retire a Judicial Officer on

considerations of continued utility and fitness cannot be destroyed. It may be mentioned that what is stated in the Explanation to sub-section (1-A) was also stated by the Division Bench of this Court in Writ Petition No. 14670 of 1993 based on the dicta of the Supreme Court. The petitioner is placed in no better position by reason of the Amendment Act of 1998. Considering the question from every stand point, we have therefore no hesitation in rejecting the contention of the learned counsel for the petitioner."

The above judgment is, in our considered view, a complete answer to the petitioner's challenge to the order of retirement on the ground that the procedure prescribed under the 1991 Rules for compulsory retirement had not been followed.

The question which remains to be decided is whether the recommendations made by the Administrative Committee of the High Court and the consequential action taken by the State Government to retire the petitioner at the age of 58 years are vitiated by arbitrariness and whether his case falls within the parameters of judicial review of such cases. An inter-related issue which falls for our consideration is whether the service record of the petitioner and his annual confidential record dossiers contain some adverse material which could justify formation of an opinion that he is no longer fit to be continued in service or that he has outlived utility for the service.

It is settled law that an employee can be retired from service after completing a specified period of service or attaining a particular age if, on an assessment of his service record, work, performance and conduct, the competent authority forms a bona fide opinion that he has outlived utility for service or he has become a deadwood or that his continuance in service is not in public interest. If the action taken by the employer is challenged in a petition filed under Article 226 of the Constitution, the High Court cannot sit in appeal and upset

the decision of the competent authority merely because on a reassessment of the record, it is possible to form a different opinion. If, on the other hand, it is found that the decision of the competent authority is tainted by arbitrariness or mala fides or non-application of mind, the High Court can exercise the power of judicial review and nullify the impugned decision. The High Court can also exercise the power of judicial review if it is found that the service record of the employee does not contain any adverse entry and no person of reasonable prudence could have formed an opinion for his premature/compulsory retirement from service. In **Baikuntha Nath Das v. Chief Distt. Medical Officer**[5], a three Judges Bench of the Supreme Court reviewed various judicial precedents on the subject and laid down the following propositions:

> "i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
>
> ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.
>
> iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (*a*) mala fide or (*b*) that it is based on no evidence or (*c*) that it is arbitrary — in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.
>
> iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter — of course attaching more importance to record of and performance during the

later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference."

In **Post and Telegraphs Board v. C.S.N. Murthy**[6], another Bench of three Judges of the Supreme Court referred to the propositions laid down in the case of **Baikuntha Nath Das** (supra) and held:

"An order of compulsory retirement is not an order of punishment. F.R. 56(j) authorises the Government to review the working of its employees at the end of their period of service referred to therein and to require the servant to retire from service if, in its opinion, public interest calls for such an order. Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts will not interfere with the exercise of this power, if arrived at bona fide and on the basis of material available on the record. No mala fides have been urged in the present case. There was material which showed that the efficiency of the petitioner was slackening in the last two years of the period under review and it is, therefore, not possible for us to fault the conclusion of the department as being mala fide, perverse, arbitrary or unreasonable."

In **State of Gujarat v. Umedbhai M. Patel**[7], the Supreme Court upheld the order of Gujarat High Court which quashed the compulsory retirement of the respondent. Their Lordships referred to the judgment in the case of **Baikuntha Nath Das** (supra) and held:

> "(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.
>
> (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.
>
> (iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.
>
> (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.
>
> (v) Even uncommunicated entries in the confidential record can also be taken into consideration.
>
> (vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.
>
> (vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.
>
> (viii) Compulsory retirement shall not be imposed as a punitive measure."

At this stage, we may also notice the caution administered by the Supreme Court to the High Court in dealing with the judicial officers. In **Bishwanath Prasad Singh v. State of Bihar** (supra), the Supreme Court emphasized the need for fairness and justness in

performing the inspection and making the entries in the confidential rolls of the judicial officers and observed:

> "The very power to make such entries as have potential for shaping the future career of a subordinate officer casts an obligation on the High Courts to keep a watch and vigil over the performance of the members of subordinate judiciary. An assessment of quality and quantity of performance and progress of the judicial officers should be an ongoing process continued round the year and then to make a record in an objective manner of the impressions formulated by such assessment. An annual entry is not an instrument to be wielded like a teachers' cane or to be cracked like a whip. The High Court has to act and guide the subordinate officers like a guardian or elder in the judicial family. The entry in the confidential rolls should not be a reflection of personal whims, fancies or prejudices, likes or dislikes of a superior. The entry must reflect the result of an objective assessment coupled with an effort at guiding the judicial officers to secure an improvement in his performance. Entries either way have serious implications on the service career. Hence the need for fairness, justness and objectivity in performing the inspections and making the entries in the confidential rolls."

In **Registrar, High Court of Gujarat v. C.G. Sharma**[8], the Supreme Court highlighted the adverse circumstances in which the honest judicial officers are required to work and observed:

> "An honest judicial officer is likely to have adversaries in the mofussil courts and if complaints are entertained on trifling matters relating to judicial orders, which may have been upheld by the High Court on the judicial side, no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. If judicial officers are under constant threat of complaint and enquiry on trailing matter and if the High Court encourages anonymous complaints to hold the field the subordinate judiciary will not be able to administer justice in an

independent and honest manner. It is, therefore, imperative that the High Court should also take steps to protect its honest officer by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants. The judicial officers have also to face sometimes quarrelsome, unscrupulous and cantankerous litigations but they have to face them boldly without deviating from the right path and that they are not expected to be overawed by such litigants or fall to their evil designs."

In the light of the above, we shall now consider whether there was some tangible material before the Administrative Committee which can justify formation of an opinion that the petitioner was not fit to be continued in service up to the age of superannuation i.e., 60 years in terms of substantive part of Section 3(1-A).

The original record produced by the learned counsel for the High Court shows that when he was posted as District Munsif, Siricilla, District Karimnagar, the petitioner was placed under suspension with effect from 13-10-1992. He remained under suspension till his removal from service with effect from 22-6-1994. During this period, an enquiry was instituted against him on the following charges:

"**Charge No.1:**

That a sum of Rs.18,350/- in Cr.No.83/92 of Vemulawada P.S. was kept with the charged officer after handing over charge of his office to Sri V. Balaram, Additional District Munsif, Karimnagar on 1-7-1992 after noon and that ultimately the said money was handed over by the charged officer to the Superintendent, District Court, Karimnagar on 10-7-1992 FN, thereby during this interregnum period the said sum of Rs.18,350/- was kept with the charged officer without handing over to his successor.

Charge No.2 (Addl.):

The charged officer in the property list in Cr.No.83/92 of

Vemulawada P.S. removed certain papers from the record and handed over the same to Sri B. Eshwar Rao, Munsif Magistrate, Sircilla on 18-7-1992, only after he was issued a memo on 13-7-1992."

The reply filed by the petitioner was not found to be satisfactory and a regular departmental enquiry was ordered. The enquiry officer submitted report dated 7-6-1993 with the conclusion that both the charges have been proved. The High Court accepted the report of the enquiry officer and recommended his removal from service as a disciplinary measure. The State Government accepted the recommendations of the High Court and passed order dated 14-6-1994 whereby the petitioner was removed from service.

The petitioner challenged his removal from service by filing Writ Petition No.14615 of 1994. A Division Bench of the High Court noted the contention of the petitioner that there was no mala fide intention on his part and held that at the worst his conduct may amount to a technical lapse or technical misconduct or trivial misconduct, which will not justify imposition of extreme penalty of removal from service. The Division Bench observed that even according to the petitioner-delinquent officer, he did not handover a sum of Rs.18,350/- being the case property in crime No.83 of 1992 of Vemulawada Police Station on 1-7-1992 itself to his successor in office, when he handed over the charge of his office and it is also the admitted position that the property seizure memo was separated from the records and it was wrongly mixed up with the personal papers of the petitioner-delinquent officer. The Division Bench held that in that view of the matter, the charges framed against the petitioner-delinquent officer are technically proved, but there was no mala fide intention. The Division Bench observed that the charges framed against the

petitioner-delinquent officer are simple and they do not involve any moral turpitude and it is one of the rarest of rare cases, where the extreme punishment of removal from service imposed on the petitioner-delinquent officer shocks the conscience of the Court. On that premise, the Division Bench allowed the writ petition and ordered the petitioner's reinstatement with consequential benefits except back wages.

While reviewing the case of the petitioner for determination of his continued utility for service, the Committee of Judges noted that he had remained under suspension from 13-10-1992 to 21-6-1994 and was removed from service with effect from 22-6-1994. The committee further noted that he was reinstated with effect from 27-7-2002. The committee then considered the extracts from his personal file relating to the years 2002 to 2004. In the year 2002 (first period), his work was quantitatively rated as 'average' and qualitatively as 'satisfactory'. In the second period of that year, his work was quantitatively rated as 'average' and qualitatively as 'poor'. In the first and second period of 2003, his work was quantitatively rated as 'average' and 'satisfactory' respectively. In 2004, his work was rated as 'satisfactory'. In the special confidential reports dated 5-3-2004 and 19-10-2004 sent by District Judge, Nellore, the following remarks were recorded:

> "**Special Confidential Report dated 5-3-2004**
> Integrity, Tact and Temper – Satisfactory; Quantity – Satisfactory; Quality – Average; General Remarks – The officer is in the habit of claiming full units though the defendants remained ex parte in civil suit vide O.S.203/1995. There are no adverse complaints at present against him. His conduct and character are satisfactory.
>
> **Special Confidential Report dated 19-10-2004**

Integrity, Tact and Temper – Satisfactory; Quantity – Satisfactory; Quality – Average; General Remarks – In criminal cases the officer is habituated to claim full units in hostile cases."

The Committee also noted that the representation made by the petitioner for payment of full salary and allowances for the period of suspension was rejected by the High Court vide proceedings dated 5-10-2004. On the basis of this evaluation the Committee concluded that the petitioner was not fit to be continued in service beyond the age of 58 years and he should be compulsorily retired from service under proviso to Section 3 (1-A) of the Act.

In our opinion, the material available before the Administrative Committee was more than sufficient for forming an opinion that the petitioner was not fit to be continued in service up to the age of 60 years and should be compulsorily retired at the age of 58 years. Although the petitioner's removal from service was set aside by the High Court on judicial side by invoking the doctrine of proportionality, the fact remains that he had been found guilty of the charge of not handing over Rs.18,350/-, which he subsequently gave to the officer who took charge from him. If this act of delinquency is considered in conjunction with the entries recorded in his service profile of the last three years, including the special confidential reports sent by District Judge, Nellore, it is not possible to hold that the opinion formed by the Committee of Judges for his compulsory retirement is vitiated due to arbitrariness or non-application of mind. An officer who is habitual of making false claim regarding disposal of cases can certainly be termed as unfit to be continued in service beyond the particular age because this act cast adverse reflection on his sincerity in the discharge of duty as judicial officer.

We are further of the view that rejection of the representation made by the petitioner in furtherance of the Court's order dated 22-2-2006 does not suffer from any legal infirmity. The Committee of Judges took notice of the fact that the performance of the petitioner was 'poor' in 2002 and in 2004 he was found habitual of claiming full units of the cases decided ex parte as also the cases in which the witnesses turned hostile. It can thus be said that the committee had objectively considered the matter and did not find any merit in the plea of the petitioner for review of his premature retirement. Therefore, by applying the ratio of the judgments of the Supreme Court in **Baikuntha Nath Das v. Chief Distt. Medical Officer** (supra), **Post and Telegraphs Board v. C.S.N. Murthy** (supra), **State of Gujarat v. Umedbhai M. Patel** (supra) and **Nawal Singh v. State of U.P.**[9], we hold that the petitioner has failed to make out a case for judicial review of his compulsory retirement.

In the result, the writ petition is dismissed.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

August , 2006

svs

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[1] (1992) 1 SCC 119

[2] (1993) 4 SCC 288

[3] (2001) 2 SCC 305

[4] 1999 (6) ALD 586

[5] (1992) 2 SCC 299

[6] (1992) 2 SCC 317

[7] (2001) 3 SCC 314

[8] (2005) 1 SCC 132

[9] (2003) 8 SCC 117